TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 582

WATERMAN STEAMSHIP CORPORATION,
PETITIONER,

vs.

DAVID E. JONES

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 10, 1942.

CERTIORARI GRANTED JANUARY 4, 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

WATERMAN STEAMSHIP CORPORATION, PETITIONER,

vs.

DAVID E. JONES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX.

[fol. 1]

IN UNITED STATES DISTRICT COURT, EASTERN PENNSYLVANIA

DOCKET 1481, CIVIL ACTION

DAVID E. JONES

vs.

WATERMAN STEAMSHIP CORPORATION

Basis of Action—Federal Question

Jury Trial Claimed by Plaintiff on April 17, 1942

Seamen's Act

Attorneys:

Freedman & Goldstein for Plaintiff.
Rawle & Henderson for Defendant.

DOCKET ENTRIES

April 17, 1941.		Complaint filed.
17,	"	Summons executed.
17,	"	Plaintiff's demand for Jury Trial filed.
30,	"	Summons returned "on Apr. 25, 1941, served" and filed.
May 14,	"	Motion to dismiss filed.
June 16,	"	Argued sur motion to dismiss.
Dec. 5,	"	Opinion, Kirkpatrick, J. granting motion to dismiss filed.
Dec. 5,	"	Judgment of Dismissal filed 12/6/41 noted and notice filed.
Feb. 24, 1942.		Plaintiff's notice of Appeal filed 2/25/42. Copy to R. & H.
Feb. 24,	"	Copy of Clerk's Notice to U. S. Circuit Court of Appeal filed.
April 1,	"	Order of Court extending time for filing record on appeal for 20 days filed 4/2/42 noted and notice mailed.

[fol. 2] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

COMPLAINT—Filed April 17, 1941

Complainant, David E. Jones, claims of the above named respondent the sum of Five Thousand Dollars ($5000.00) with lawful interest thereon, upon a cause of action whereof the following is a true statement:

(1) Complainant is a seaman in the United States Merchant Marine.

(2) Respondent, Waterman Steamship Corporation, is a corporation duly organized and existing under and by virtue of the laws of the State of Alabama.

[fol. 3] (3) Complainant, upon information and belief, avers that at all the times hereinafter mentioned, respondent owned, operated and controlled the S. S. "Beauregard", engaged in coastwise, intercoastal and foreign commerce.

(4) On or about the 16th day of January, 1941, and at all times mentioned herein, complainant was in the employ of respondent as a member of the crew of the S. S. "Beauregard", in the capacity of a messman, at the rate of Seventy Dollars ($70.00) per month and found on coastwise articles from New Orleans, La., to East Coast and Gulf Ports of the United States, for a period of twelve (12) months.

(5) On or about the 16th day of January, 1941, at or about 5:50 P. M. o'clock and while the vessel was moored to Pier C, Port Richmond, Philadelphia, complainant, in the course of his employment left the vessel on shore leave and was proceeding through the pier towards the street when all the lights on the pier were extinguished and in the ensuing darkness fell into the open ditch at the railroad siding and sustained the injuries which are more specifically hereinafter set forth.

(6) During the entire period complainant was employed, he well and truly performed all his duties and was obedient to all lawful commands of the master and other officers of the said vessel.

[fol. 4] (7) As a result of the fall which complainant sustained as aforesaid, he was then and there violently

wounded and injured; he suffered a severe shock to his nervous system; his head was severely injured and he suffered a cerebral concussion and other internal injuries in the head; his back and spine were severely wrenched and injured; he suffered severe and serious injuries to his chest and particularly on the left side, his abdomen and particularly on the left side; his left arm and right knee were severely injured, wrenched, sprained and otherwise injured; his heart was affected; he suffered injuries to his wrist; his ribs were fractured; the left elbow joint was severely wrenched and injured; his left wrist was severely wrenched, sprained and injured; his left hand was injured and impaired; a fine, metallic, body penetrated the lower end of the left radius on the anterial surface; he suffered bruises and abrasions and injuries over both legs; and upon information complainant believes, and therefore avers that he is suffering from a brain injury; the left radial and ulnar nerve was seriously injured together with bony and soft tissue structure; he has suffered excruciating and agonizing aches, pains, mental anguish, shock and disability; he has been unable to assume his usual duties and occupation for a long period of time in the past, and upon information believes and therefore avers, that his injuries have become aggravated and that he will be disabled from performing his usual duties and occupation for a long [fol. 5] period of time in the future; he has in the past and will in the future be compelled to expend large sums of money for medical care and treatment.

(8) Complainant by virtue of his service upon the said vessel claims wages to the end of the articles and maintenance and cure for the period of his disability in an amount, which to your Honorable Court shall seem just and proper upon the trial of this cause.

Wherefore, David E. Jones, claims the sum of Five Thousand Dollars ($5000.00) and brings this action to recover same from the respondent.

Freedman & Goldstein, by (Sgd.) Abraham E. Freedman, Attorneys for Complainant.

[fol. 6] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

MOTION TO DISMISS—Filed May 14, 1941

The defendant moves the court to dismiss the complaint with prejudice for the following reasons:

(1) The plaintiff at the time of his alleged injury was not in the service of the vessel.

(2) The facts alleged show no negligence or other legal obligation upon the part of the defendant to pay damages or cure and maintenance to the plaintiff.

(3) The complaint does not state a claim upon which relief can be granted,

Rawle & Henderson, by (Sgd.) Thomas F. Mount, Attorney for Defendant, 1910 Packard Building, Philadelphia, Pennsylvania.

[fol. 7] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

OPINION SUR MOTION TO DISMISS COMPLAINT—Filed December 5, 1941

Before Kirkpatrick, J.

This is an action for maintenance and cure and wages, by a member of the crew of the S. S. "Beauregard", who is alleged to have sustained personal injuries. The circumstances of the accident are stated in the complaint as follows: "On or about the 16th day of January, 1941, at or about 5:50 P. M. o'clock and while the vessel was moored to Pier C, Port Richmond, Philadelphia, plaintiff, in the course of his employment left the vessel on shore leave and was proceeding through the pier towards the street when all the lights on the pier were extinguished and in the ensuing darkness fell into the open ditch at the rail-

road siding and sustained the injuries which are more specifically hereinafter set forth."

[fol. 8] The law allows cure and maintenance only for disability incurred in the service of the ship. Is an injury sustained by a seaman on shore leave and away from the vessel, but not brought about by any act of his definitely outside the line of duty, within this rule?

The plaintiff concedes that the rule of the President Coolidge, 23 F. Supp. 575, would prevent his recovery in this case, but argues that that decision must have been based upon a misunderstanding of the opinion in the case of Meyer v. Collar S. S. Lines, 40 F. (2d) 1002.

In the Myers case a seaman off watch and resting on the deck with several of his shipmates received a leg injury on the course of a good natured scuffle with one of them. The Court denied recovery for wages to the end of the voyage on the ground that the injury did not occur in the "service of the ship." The Court placed the decision upon the ground that the disability was caused by an independent cause intervening between the seaman's performance of duty and the injury. The plain implication from the opinion is that the mere fact that the seaman was off duty at the time does not necessarily take him out of the service of the ship.

The plaintiff argues that so long as the voyage is uncompleted and the seaman not paid off he is in the service of the ship, *not* matter where he may be; and that the sole test of his right to recover is whether or not his injury [fol. 9] resulted from conduct on his part entirely unconnected with his duties and constituting an intervening cause between his employment and the injury. I do not think that the argument will bear analysis.

There is a plain distinction between the situation of the seaman in the Myer case, off watch on the deck of the ship, and what occurred in the President Coolidge case. In the latter case, the seaman had left for purposes of his own entirely unconnected with h*im* employment (to answer a telephone call from his wife) and was injured in climbing a l*att*er (part of the pier) to get back upon the ship. Whether I should care to go quite as far as did the Court in the President Coolidge is not necessary to decide, for in the present case, the seaman was starting off on shore leave for a period not stated in the Complaint.

The distinction between a sailor off duty but on the ship, as in the Meyer case, and one who has left the ship on shore leave, as here, is not merely one of his physical whereabouts. True, in both cases, he is theoretically subject to the call of duty in case of emergency or perhaps for other reasons. But, only upon the ship, is this theoretical subjection to call of duty a practical matter. He can be reached to do what is necessary. On shore leave he may go wherever he pleases, and if he goes where he cannot be reached he is to all practical intents and purposes exempt from any call to serve the ship until he returns; and what-[fol. 10] ever his general obligation, he is actually beyond the power and authority of the ship's officers.

Of course this is not to be taken as holding that the mere fact that the sailor is physically on shore always put him outside the service of the ship. There may be circumstances where, even on shore leave, he is still within the reach of the call of duty, and in such cases it might well be that he is in the service of the ship. However, the complaint in this case shows nothing but "shore leave", and, as stated, implies nothing more than an obligation to return to the ship at some specified time.

For the reasons stated, I hold that the plaintiff in this case was not in the service of the ship when injured, and the complaint may be dismissed.

To the same general effect are Collins v. Dollar S. S. Line, 23 F. Supp. 395, and Smith vs. American South African Line, 37 F. Supp. 262. The old case of Reed v. Canfield, 20 Fed. Cas. 11, 641, relied on by the libellant, clearly does not reach the facts of the present case. In that case the seaman's injury was incurred while a member of a boat's crew which was attempting to row two of the ship's officers back to the ship after the entire party had spent several hours on shore. The fact that the boat's company had gone on shore wrongfully and had overstayed the time limited them did not make what he was actually doing at the time of the injury outside the service of the ship.

[fol. 11] Ringgold v. Crocker, 20 Fed. Cas. 11, 843, merely holds that the phrase "service of the ship" is not confined in meaning to acts done for the benefit of the ship or in the actual performance of the seaman's duty. The injury in

that case was incurred while the seaman was being flogged by the mate as a punishment for alleged misconduct and contumacy.

Motion is granted and Clerk is direct to enter judgment accordingly.

[fol. 12] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 1481. Civil Action

DAVID E. JONES

vs.

WATERMAN STEAMSHIP CORPORATION

JUDGMENT—Filed December 5, 1941

Before Kirkpatrick, J.

And Now, to wit, December 5, 1941, in accordance with the opinion of the Court granting defendant's motion to dismiss, it is Ordered That the above action be and the same is hereby dismissed with costs to the defendant.

By the Court. Attest: Gilbert W. Ludwig, Deputy Clerk.

[fol. 13] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 8011

DAVID E. JONES

vs.

WATERMAN STEAMSHIP CORPORATION

PETITION FOR LEAVE TO PROSECUTE APPEAL WITHOUT PREPAYMENT OF COSTS, CLERK'S FEES AND FOR LEAVE TO TYPEWRITE THE RECORD AND BRIEFS ON APPEAL—Filed April 20, 1942

To the Honorable, the Judges of the Said Court:

The Petition of David E. Jones, an American Merchant Seaman, respectfully represents:

1. That on the 12th day of April, 1941, your Petitioner commenced an action at law for recovery of maintenance

and cure and wages by reason of certain personal injuries sustained by him while in the employ of the respondent company. Said company being engaged in interstate and foreign commerce by sea.

2. That your Petitioner brought the said action without prepayment of costs, under the provisions of the Act of July 1, 1918 C. 113, section 1, 40 Stat. 683; 28 U. S. C. A. 837.

3. That on the 14th day of May, 1941, a motion to dismiss the said action was filed by the respondent.

4. That on the 16th day of June, 1941, the said motion was heard on argument before the Honorable William H. Kirkpatrick.

[fol. 14] 5. That on the 5th day of December, 1941, an Opinion was filed by the Honorable William H. Kirkpatrick, granting the motion to dismiss the action. On the same day, judgment of dismissal was filed.

6. That on the 24th day of February, 1942, the plaintiff's Notice of Appeal was filed.

7. Your Petitioner is a seaman in the American Merchant Marine and now seeks leave to prosecute this appeal without prepayment of the clerk's fees and without being required to post security, claiming the benefit of the Act of July 1, 1918, C. 113, section 1, 40 Stat. 683, and further, that he be given leave to typewrite the Record and Briefs in this Court.

And your Petitioner will ever pray etc.

Freedman & Goldstein, by Abraham E. Freedman,
Attorneys for Plaintiff.

[fol. 15] State of Pennsylvania,
County of Philadelphia, ss:

Abraham E. Freedman, being duly sworn according to law, deposes and says that he is the attorney for the plaintiff above named; that the facts and allegations contained in the foregoing Petition are true and correct to the best of his knowledge, information and belief; that the plaintiff is unable to take his affidavit by virtue of the fact that

he is out of the jurisdiction and engaged in foreign commerce and has authorized the deponent to act in his stead; and that this Appeal is not taken for the purpose of delay, but because Petitioner believes that injustice has been done.

Abraham E. Freedman, (Sgd.)

Sworn to and subscribed before me this 31st day of March, 1942. Milton M. Borowsky, Notary Public. My commission expires Mar. 24, 1945.

[File endorsement omitted.]

[fol. 16] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

ORDER GRANTING LEAVE TO PROSECUTE APPEAL WITHOUT PREPAYMENT OF COSTS—April 20, 1942

Coram: Biggs, Jones and Goodrich, JJ.

And now, to-wit, this 20th day of April, 1942, upon consideration of the foregoing Petition, it is ordered that leave to prosecute the appeal in the above entitled case be and hereby is allowed without prepayment of costs, clerk's fees and with leave to typewrite the Record and Briefs in this Court.

By the Court: John Biggs, Jr., J.

[File endorsement omitted.]

[fol. 17] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

ORDER ASSIGNING JUDGE FOR ARGUMENT—July 15, 1942

Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

And now, to-wit: this 15th day of July, A. D. 1942, it is ordered that Hon. Paul Leahy District Judge, for the —

District of Delaware, and Hon. —— ——, District Judge, for the — District of —, be, and he is hereby assigned to sit in above case in order to make a full court.

Jones, Circuit Judge.

[File endorsement omitted.]

[fol. 18] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

MINUTE ENTRY OF ARGUMENT—July 15, 1942

And afterwards, to-wit the 15th day of July, 1942, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Charles Alvin Jones and Honorable Herbert F. Goodrich, Circuit Judges, and Honorable Paul Leahy, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to-wit, on the 21st day of September, 1942 come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 19] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

OPINION—Filed September 21, 1942.

Before Jones, Goodrich, Circuit Judges and Leahy, District Judge

GOODRICH, Circuit Judge:

This case is before the court upon an appeal from a dismissal of the plaintiff's complaint by the court below on the ground that the plaintiff's allegations did not state a claim upon which relief could be granted. The action is one brought by a seaman to recover the cost of maintenance,

cure and wages. According to his allegations the plaintiff signed on under coastwise articles from New Orleans, La., to East Coast and Gulf Ports of the United States for a period of twelve months. While the vessel was moored to [fol. 20] Pier C, Port Richmond, Philadelphia, January 16, 1941, plaintiff left on shore leave. As he was proceeding through the pier toward the street all the lights on the pier went out. In the ensuing darkness the plaintiff alleges that he fell into an open ditch at a railroad siding and sustained injury.

The obligation of the defendant to the plaintiff arising out of the maritime law for maintenance and cure is stated in the leading case of The Osceola, 189 U. S. 158, 175 (1903) as follows: "That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued."

The only point with which we are here concerned is the requirement, in order that the obligation for maintenance and cure apply, that the injury or illness arise in the service of the ship. The amount of the claim is not before us nor is there any question of a claim otherwise recoverable being lost by the "wilful misconduct" of the seaman. Decisions involving the latter point are useful only in so far as they assist in defining the right.[1]

The plaintiff's point is that he was continuously in the service of the ship and subject to orders even while on shore leave since he was at all times subject to the call of duty. Defendant says that the plaintiff's liability to orders was theoretical while on shore leave and this was the view taken by the District Judge who said that whatever the general obligation of the seaman might be "he is actually beyond the power and authority of the ship's officers" while on leave.

The nature of the obligation for maintenance and cure has been elaborated at length by judges learned in mari-

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[1] The S. S. Berwindglen, 88 F. (2d) 125 (C. C. A. 1, 1937); Barlow v. Pan Atlantic S. S. Corporation, 101 F. (2d) 697 (C. C. A. 2, 1939); Oliver v. Calmar S. S. Co., 33 F. Supp. 356 (E. D. Pa. 1940).

time law.[2] This learning will not be repeated here. It is sufficient to say that the right arises out of the relationship [fol. 21] by virtue of the peculiar nature of maritime employment. It has been stated in broad language as applicable whenever the injured person was, "when incapacitated, subject to the call of duty as a seaman, and earning wages as such."[3]

As an authority against the right of the plaintiff to recover in this case the defendant relies strongly upon a decision of the Circuit Court of Appeals for the Ninth Circuit. Meyer v. Dollar S. S. Line, 49 (F. (2d) 1002 (C. C. A. 9, 1931). In that case a seaman received an injury while scuffling on the after-port deck with his shipmates. The injured man was off watch at the time. Recovery of wages to the end of the voyage was denied. The court stated that the injured man was at the time in the service of the ship since he was subject to the call of duty even though off watch, but considered that when he commenced scuffling for his own amusement the situation was changed. The court found an analogy by reference to "line of duty" from "Naval Courts and Boards"[4] and the opinion of the Attorney General construing the phrase "in line of duty" as used in the War Risk Insurance Act. The portion of the opinion of the Attorney General quoted discusses "line of duty" for a soldier. If a reference to land employment is relevant one might also look to the judicial construction of

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[2] See the discussion in the Osceola case, supra; Harden v. Gordon, 11 Fed. Cas. No. 6,047 (C. C. D. Me. 1823); Reed v. Canfield, 20 Fed. Cas. No. 11,641 (C. C. D. Mass. 1832); The Bouker No. 2, 241 Fed. 831 (C. C. A. 2, 1917), cert. denied 245 U. S. 647 (1917).

[3] The Bouker No. 2, supra at p. 833, cited with apparent approval in Calmar S. S. Corp. v. Taylor, 303 U. S. 525, 529 (1938).

[4] Note, however, that the definition quoted is "A person in the active service and submitting to its rules and regulations is, in general, in the line of duty." One may ask whether a seaman on shore leave, away from his ship, but with definite limitations on his time of absence, is not submitting to rules and regulations. Cf. the language of the Court in Southern Steamship Co. v. National Labor Relations Board, — U. S. — (1942).

phrases like "arising out of and in the course of employment" and other problems in the application of Employers' Liability and Workmen's Compensation Acts. Be that as it may, we are not here called upon either to agree or disagree with the approach of the court to the problem in the Meyer case nor the several District Court cases which have relied upon and extended it. In spite of provisions that the rule regarding maintenance and cure is a beneficent one to [fol. 22] be applied liberally for the benefit of the seaman, we see in them a distinct tendency to limit the scope of its operation to a much narrower situation than that involved in the concept of employment in the cases of workmen injured in non-maritime occupations.[5] We may treat the Meyer case as an application of the accepted doctrine that the seaman cannot recover for wilful acts on his own part. And we do not need to decide here and, therefore, leave open for decision when the case arises, what might be the legal liability if this plaintiff, having left the pier safely, had been hit by a truck on the public streets of Philadelphia,[6] nor his rights if he sprained his ankle playing baseball on shore.[7] This case involves only the question of the seaman's rights with regard to injury suffered in the area immediately adjacent to his place of work through which he, of necessity, had to pass in going or coming. This liability for maintenance and cure has been, we think, directly adjudicated in former decisions. With respect to this there is no reason, as Justice Story said six score years ago, "to desert the steady light of maritime jurisprudence for the more doubtful guide of general reasoning." Harden v. Gordon, supra. Liability for maintenance and cure for injuries sustained through exposure in returning to the ship was imposed by Justice Story in Reed v. Canfield, supra, where the shore expedition was purely social on the part of those participating in it and where, as

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[5] See The President Coolidge, 23 F. Supp. 575 (N. D. Wash., 1938) where recovery was denied when the seaman was injured while responding to a telephone call from his wife.

[6] Cf. Smith v. American South African Line, Inc., 37 F. Supp. 262 (S. D. N. Y., 1941).

[7] Cf. Collins v. Dollar S. S. Lines, Inc., Ltd., 23 F. Supp. 395 (S. D. N. Y., 1938).

a matter of fact, the crew overstayed its leave. While it is true that officers of the ship were along, the seaman was a member of the party because he volunteered for the occasion. A seaman coming on board to join the ship's crew was allowed recovery for injuries sustained when he fell off a ladder.[8] And a man injured while walking over property at which his vessel was berthed to go aboard and take up [fol. 23] his watch was likewise held to be in the service of the ship.[9] These cases are all instances of a seaman injured while going to work. But the same rule has been applied in the Fourth Circuit, The Michael Tracy,[10] where the seaman, having been paid and discharged at the end of the voyage fell off a ladder when leaving the ship. "The service of the ship is by no means limited to acts done for the benefit of the ship, or in the actual performance of the seaman's duty on board." said the court in Ringgold v. Crocker, 20 Fed. Cas. No. 11,843 (S. D. N. Y., 1848). Just how much further it goes we need not, in this instance, commit ourselves. It certainly goes far enough to include injuries sustained in the immediate neighborhood while going upon or leaving the ship on which the man is employed.

The judgment of the District Court is reversed and the case remanded for further proceedings not inconsistent with this opinion.

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[8] The Scotland, 42 Fed. 925 (S. D. N. Y. 1890).

[9] Hogan v. S. S. J. M. Danziger, 1938 Am. Mar. Cas. 685 (S. D. N. Y., 1937). But see contra, Lilly v. United States Lines Co., 42 F. Supp. 214 (S. D. N. Y., 1941).

[10] 295 Fed. 680 (C. C. A. 4, 1924).

[fol. 24] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT—October Term, 1941

No. 8011

DAVID E. JONES, Appellant,

WATERMAN STEAMSHIP CORPORATION, Appellee

JUDGMENT—September 21, 1942

On appeal from the District Court of the United States, for the Eastern District of Pennsylvania.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby reversed, and the case is remanded to the said District Court for further proceedings not inconsistent with the opinion of this court.

Goodrich, Circuit Judge.

September 21, 1942.

[File endorsement omitted.]

[fol. 25] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,

Eastern District of Pennsylvania,
Third Judicial Circuit, Set.:

I, WM. P. ROWLAND, Clerk of the United States Circuit Court of Appeals for the Third Circuit, Do Hereby Certify the foregoing to be a true and faithful copy of the original Appendix to Brief for Appellant, as constituting the portions of the *the* record before this court at argument; and proceedings in this court in the case of David E. Jones, Appellant, vs. Waterman Steamship Corporation, No. 8011, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 20th day of October in the year of our Lord one thousand nine hundred and forty-two, and of the Independence of the United States the one hundred and sixty-seventh.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

[fol. 26] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO RECORD—Filed Nov. 20, 1942

Subject To This Court's Approval, It Is Hereby Stipulated And Agreed by and between the attorneys for the respective parties hereto, that for the purpose of the petition for a writ of certiorari, the printed record may consist of the following:

1. The typewritten appendix to brief of David E. Jones as filed in the United States Circuit Court of Appeals for the Third Circuit;

2. The proceedings had before the United States Circuit Court of Appeals for the Third Circuit.

Dated at Philadelphia, Pa., this 19th day of November, 1942.

Joseph W. Henderson, Attorney for Waterman Steamship Company.

Dated at Philadelphia, Pa., this 19th day of November, 1942.

Abraham E. Freedman, Attorney for David E. Jones.

[fol. 27] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 582

ORDER ALLOWING CERTIORARI—Filed January 4, 1943.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.